

Department of Labor and Industry
Board of Personnel Appeals
PO Box 201503
Helena, MT 59620-1503
(406) 444-2718

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE NO. 28-2009

MONTANA PUBLIC EMPLOYEES)	
ASSOCIATION,)	
Complainant,)	INVESTIGATIVE REPORT
-vs-)	AND
)	NOTICE OF INTENT TO DISMISS
MARIAS MEDICAL CENTER AND)	
TOOLE COUNTY,)	
Defendant,)	

I. Introduction

On June 30, 2009, the Montana Public Employees Association, hereinafter MPEA or the Association, filed an unfair labor practice charge with the Board of Personnel Appeals alleging that Toole County and the County operated Marias Medical Center, hereinafter MMC or the County, violated contractual and legal obligations by ceasing to collect dues from "29 or more bargaining unit members without the knowledge of and without notifying Complainant, the exclusive agent". MPEA further alleges that in doing this MMC was "in effect, complicit in 'union busting'". Violations of the provisions of "Section 39-31-401 (1)-(5)" are alleged in the complaint. MMC, through its Chief Executive Officer, Mark Cross, responded to the complaint on July 13, 2009, and has denied any violation of either contract or law. Carter Picotte, MPEA staff attorney, is representing the Association in this matter.

John Andrew was assigned by the Board to investigate the charge and has reviewed the information submitted by the parties and communicated with them as necessary in the course of the investigation.

II. Findings and Discussion

MMC and MPEA have been in an ongoing bargaining relationship for many years. MMC and MPEA are currently party to a bargaining agreement the term of which is January 1, 2009 through June 30, 2010. The most recent collective bargaining agreement was reached between the parties in April of 2009, after extensive

negotiations and a strike notification on the part of MPEA. Article 2 of the current agreement contains a union security clause the relevant parts of which provide:

B. ASSOCIATION SECURITY

Section 1. Employees covered by this Agreement shall pay a representation fee and be represented by the ASSOCIATION with the exception of seasonal employees who are employed December 15th through January 2nd and/or from May 15th through September 15th of any work year. If an employee elects to not be a member, such employee must, in writing waive his or her right to vote and participate in elections and matters affected by the ASSOCIATION activities.

Section 2. Upon Written authorization from an employee covered by this Agreement the COUNTY shall deduct from the employee's pay the amount owed to the ASSOCIATION by such employee for dues or representation fee. The COUNTY will remit to the ASSOCIATION such sums within thirty (30) calendar days. Changes in the ASSOCIATION membership dues rate and representation fee will be certified to the COUNTY in writing over the signature of the authorized officer or officers of the ASSOCIATION and shall be done at least 30 calendar days in advance of such change.

Section 3. The COUNTY, within 30 days of the signing of this Agreement, shall present the ASSOCIATION with the list of the names and addresses of all current employees covered by this Agreement, and shall update such list each month for all new hires.

Article 2 then goes on to indemnify the County against claims involving provisions of Article 2 and defines access to County facilities by authorized representatives of MPEA.

In November of 2008 MMC hired an employee named Brian Durham. Mr. Durham was a dues paying member of MPEA. Suffice to say, Mr. Durham became dissatisfied with the representation he believed he was receiving from the MPEA field representative. This dissatisfaction grew, and when contract negotiations became particularly contentious and the possibility of a strike became more real Mr. Durham began questioning why, and whether, he should be paying dues to the Association and why dues should be withheld from his wages. Mr. Durham approached management with his concerns and to have his questions answered. According to Mr. Durham management officials remained neutral in any discussions he initiated with them. In fact, according to Mr. Durham, Mark Cross would not even discuss dues payment with him. Eventually, and at Mr. Durham's request, Cindy Lamb, MMC Human Resource Director, did provide Mr. Durham with a copy of the collective bargaining agreement, although according to Ms. Lamb, he should have received one at the time he was hired. Mr. Durham read the contract as it pertained to dues withholding. Based on his read of the agreement Mr. Durham believed that he could elect to not have either rep fee or Association dues withheld from his wages. He also conferred with an attorney who had

1 assisted him on other matters and, according to Mr. Durham, the attorney confirmed this
2 belief.
3

4 In March of 2009 Mr. Durham distributed a petition throughout MMC. The petition bears
5 a date of March 30, 2009, and is addressed "TO MONTANA PUBLIC EMPLOYEES
6 ASSOCIATION". The petition reads:
7

8 WE THE FOLLOWING EMPLOYEES OF MARIAS CARE CENTER ARE
9 WRITING TO YOU TO INFORM YOU THAT WE NO LONGER WISH TO
10 PARTICIPATE IN THE UNION., AND WE WILL NOT BE STRIKING. WE ARE
11 NOTIFYING (sic) HUMAN RESOURCES TO NO LONGER TAKE UNION DUES
12 OUT OF OUR CHECKS. ACCORDING TO THE CONTRACT THIS IS ALL WE
13 ARE OBLIGATED TO DO. THANK YOU.
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15
16 The petition contains 27 signatures.
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18 During the course of obtaining these signatures the petition was posted in an employee
19 muster or break room. According to Mr. Durham the petition was taken down
20 repeatedly so at an unknown point in time, and out of frustration, Mr. Durham left the
21 petition in the office of Cindy Lamb. The petition remained in Ms. Lamb's office for an
22 unknown but apparently relatively short period of time. Ms. Lamb was not comfortable
23 with the petition being in her office and could only remember perhaps one time that
24 someone came into her office to sign the petition. Eventually someone in the dietary
25 section reclaimed the petition and posted or circulated it again for employee signatures.
26
27

28 Toward the end of April the signed petition was presented to Cindy Lamb. Ms. Lamb
29 noted that the petition was addressed to MPEA, but apparently she did not notify the
30 Association that MMC had received the petition and was complying with the request of
31 the employees. Ms. Lamb forwarded the petition to County payroll to make the
32 requested changes in payroll withholding and payroll did so. When the April dues and
33 rep fee payment was forwarded to MPEA in the latter part of May MPEA discovered the
34 substantial decrease in dues and rep fee payment.
35
36

37 In response to a request from the investigator Mr. Picotte forwarded the "paper trail"
38 showing the efforts of the Association to get to the bottom of the dues/rep fee
39 withholding question. No record or recounting of any oral communications was
40 presented to the investigator by the Association. What was offered by MPEA shows
41 that in late May Sara Dobbins of MPEA became aware of the reduced dues/rep fee
42 payment. Apparently she contacted someone at MMC, but received no response. As a
43 result of this, Quinton Nyman, Executive Director of MPEA, e-mailed Mark Cross and
44 Cindy Lamb at 2:12 pm on May 29, 2009, requesting a copy of the petition and/or a
45 response from either Ms. Lamb or Mr. Cross as to the dues/rep fee withholding issue.
46 Mark Cross responded via e-mail to Mr. Nyman at 2:41 pm on June 1, 2009, advising
47 Mr. Nyman that a copy of the petition was being mailed and sent by fax to MPEA. In
48 fact, at 11:15 a.m. on June 1, 2009, Ms. Lamb did fax a copy of the petition to Ms.
49 Dobbins. According to Ms. Lamb, the reason for the delay in forwarding a copy of the
50

petition was because she had to get a copy from County payroll in order to forward it to MPEA.

39-31-203 MCA provides:

Upon written authorization of any public employee within a bargaining unit, the public employer shall deduct from the pay of the public employee the monthly amount of dues as certified by the secretary of the exclusive representative and shall deliver the dues to the treasurer of the exclusive representative.

MMC has complied with 39-31-203 and continues to comply with the statute. Absent written authorization an employer cannot withhold from employee wages for dues. Implicit in the statute is the ability of any employee or group of employees to rescind authorization to withhold dues and/or rep fee. When presented with the petition of its employees MMC honored their request. There is no statutory violation of 39-31-203 MCA on the part of MMC, and, in fact, had MMC not honored the directive of its employees MMC would have been in violation of 39-3-204 MCA providing in relevant part that:

(1) Except as provided in subsections (2) and (3), every employer of labor in the state of Montana shall pay to each employee the wages earned by the employee in lawful money of the United States or checks on banks convertible into cash on demand at the full face value of the checks, and a person for whom labor has been performed may not withhold from any employee any wages earned or unpaid for a longer period than 10 business days after the wages are due and payable, except as provided in [39-3-205](#). However, reasonable deductions may be made for board, room, and other incidentals supplied by the employer, whenever the deductions are a part of the conditions of employment, or as otherwise provided for by law.

Under the clear terms of the collective bargaining agreement the payment of dues or representation fee was not a condition of employment. Further, as per the agreement, and in accord with the statute, the County could deduct from wages only with the written authorization of the employee. Just as in the statute, the obvious implication of the collective bargaining agreement is that an employee could rescind dues or rep fee withholding. Nothing in the agreement points to the contrary and there is nothing in the contract that requires the employer to report to the Association that someone has rescinded their dues or rep fee withholding. The issue of whether or not an employee has paid dues or rep fee and whether or not an employee has or has not authorized such a withholding from wages is between the Association and the employee. Nothing in the collective bargaining agreement speaks to the contrary. Even the notice regularly published by MPEA in its member newsletter provides:

NOTICE

The Montana Public Employees Association DOES NOT have the legal right to either sign a member up for payroll deduction or to delete a member from payroll deduction. New members must sign an authorization for payroll deduction which is sent to the appropriate payroll department.

A member who has a change in job status which allows the member to drop membership in the Association MUST NOTIFY THE PAYROLL DEPARTMENT AND IS PERSONALLY RESPONSIBLE TO SEE THAT PAYROLL DEDUCTION FOR DUES IS STOPPED. MPEA IS NOT LIABLE TO REFUND DUES WITHHELD AFTET (sic) THE JOB STATUS CHANGE.

In short, MMC did not violate Montana statute or the terms of the collective bargaining agreement by ceasing dues or rep fee withholding and by not notifying MPEA of the same. Reasonably, MMC could well have assumed the employees notified MPEA of their own accord when MMC was presented with a petition addressed to MPEA. Moreover, in the course of investigating this complaint the investigator found nothing, and nothing was presented by MPEA to show that MMC had “deliberately” and “surreptitiously” engaged in conduct to be “in effect complicit in ‘union busting’”. There is simply insufficient evidence to show a violation of “39-31-401(1)-(5)” as alleged by the Complainant.

III. Recommended Order

It is hereby recommended that Unfair Labor Practice Charge 28-2009 be dismissed.

DATED this _____ day of _____ 2009.

BOARD OF PERSONNEL APPEALS

By: _____
John Andrew
Investigator

NOTICE

Pursuant to 39-31-405 (2) MCA, if a finding of no probable merit is made by an agent of the Board a Notice of Intent to Dismiss is to be issued. The Notice of Intent to Dismiss may be appealed to the Board. The appeal must be in writing and must be made within 10 days of receipt of the Notice of Intent to Dismiss. The appeal is to be filed with the Board at P.O. 201503, Helena, MT 59620-1503. If an appeal is not filed the decision to dismiss becomes a final order of the Board.

* * * * *

CERTIFICATE OF MAILING

I, _____, do hereby certify that a true and correct copy
of this document was mailed to the following on the _____ day of _____
2009, postage paid and addressed as follows:

CARTER PICOTTE
MPEA
PO BOX 5600
HELENA MT 59604

QUINTON NYMAN
MPEA
PO BOX 5600
HELENA MT 59604

MARK CROSS
MARIAS MEDICAL CENTER
PO BOX 915
SHELBY MT 59474 0915